THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 4679 OF 2007

DATED: 08-03-2007

Between:

M/s. REAL FAB INDIA PVT.LTD.
Rep. By its Managing Director
Koneru Karunakara Rao
and three others

… Petitioners

And

The State Bank of India,
Rep. By its Asst. General Manager/
Authorized Officer,
BHPV Branch, Visakhapatnam

… Respondent

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ORDER:

The first petitioner is a private limited company and obtained credit facility from the respondent-bank. Petitioners 2 to 4 have furnished personal guarantee and have also mortgaged their properties towards collateral security for the credit obtained by the first petitioner from the respondent-bank. There was a default in the repayment of the principal and the interest instalments. Consequently, the respondent-Bank after classifying the account a non-performing asset (NPA) issued a notice dated 05-09-2006 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('the Act') calling upon the first petitioner to pay an amount of
Rs.2,63,90,056.88 ps. within the stipulated period. There being no compliance with the terms of the notice under Section 13(2) of the Act, the respondent-Bank by notice dated 09-12-2006 under Section 13(4)

of the Act obtained possession of the property.

Learned counsel for the petitioners states that thereafter there were negotiations between the first petitioner and the respondent-Bank and pursuant thereto, the 1st petitioner paid Rs.90,00,000/-(Rupees ninety lakhs only) and also transferred certain Fixed Deposits in favour of the said Bank. According to the petitioners, the first petitioner requested the Bank to release the documents pertaining to agricultural land in an extent of Ac.0.99 cents in Thimmapuram Kapuluppada Panchayat, Bhiminipatnam. In the second week of February 2007, the documents pertaining to the said agricultural land were handed over to the petitioner. The petitioner also requested for release of the security documents pertaining to other properties furnished towards collateral security. At this stage, the petitioner alleges, the respondent-Bank filed an application on 05-02-2007 under Sec.14 (1&2) of the Act before the Chief Metropolitan Magistrate, Visakhapatnam for taking possession and control of the secured assets. The said application has been taken on record and is under consideration by the learned Chief Metropolitan Magistrate.

Though no orders have yet been passed by the Chief Metropolitan Magistrate, Visakhapatnam, as the respondent-bank is intending to put up the secured assets for sale, the petitioners have filed this writ petition contending that as part of the secured assets were released to the petitioner's custody, qua the documents pertaining to those assets, the Bank is disabled from proceeding under the provisions of the Act in respect of the other secured assets. Petitioners characterize the potential conduct of the respondent-Bank in proceeding with the sale of the secured assets as arbitrary and inconsistent with the earlier conduct of inducing it to pay Rs.90,00,000/-.

Learned counsel for the petitioners equivocally admits that the liability of the first petitioner even as on date is in excess of one crore, even after the alleged payment of Rs.90,00,000/-. It is also admitted

that there are other properties which were mortgaged by petitioners 2 to 4 to the respondent-bank towards collateral security for the credit facility obtained by the first petitioner; that the account was classified as NPA; and that due notices under Sections 13(2) and (4) have been issued.

In the aforesaid factual scenario, the contentions of the petitioners do not commend acceptance by this Court. The first petitioner's loan account has been duly classified as NPA and the default by the first petitioner is admitted.

The respondent-bank is thus well within its legal rights under the provisions of the Act to proceed under Sections 13(2) & (4) of the Act. Notice under Sec.13(2) as well as possessory notice under section 13 (4) has been issued as there is no compliance by the petitioner to the terms of the notice issued u/Sec.13(2) of the Act. That being the position, the Bank is at liberty to put the secured assets to sale in accordance with the specific and clear presents of the provisions of Section 13(4) of the Act.

On the aforesaid analysis, the writ petition is misconceived and is accordingly dismissed at the stage of admission after hearing the learned counsel for the petitioners and the learned counsel for Respondent-Bank. There shall however be no order as to costs.

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GODA RAGHURAM, J.

Dt: 08-03-2007
Rns.